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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 527.

CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL No. 213, *et al.*,

Petitioners,

against

RITTER'S CAFE, *et al.*

MOTION FOR LEAVE TO FILE BRIEF *and* BRIEF ON BEHALF OF THE NATIONAL LAWYERS GUILD, AS *AMICUS CURIAE* ON APPLICATION FOR REHEARING.

Abraham J. Isserman
NATIONAL LAWYERS GUILD,
as Amicus Curiae.

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CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL No. 213, *et al.*,
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RITTER'S CAFE, *et al.*

MOTION FOR LEAVE TO FILE BRIEF.

MAY IT PLEASE THE COURT:

The National Lawyers Guild respectfully moves this Honorable Court for leave to file the accompanying brief in support of the petition for re-hearing now pending before the court.

The National Lawyers Guild has observed with gratification the broadening of the rights of the people in their struggle for economic betterment through the decisions of this court which held that the Fourteenth Amendment protected from abridgment the effective exercise of the rights of free speech and of liberty of communication through picketing. Particularly, reference is made to the court's decisions in the cases of *Thornhill* v. *Alabama*, 310 U. S. 88, *Carlson* v. *California*, 310 U. S. 106 and *American Federation of Labor* v. *Swing*, 312 U. S. 221.

The National Lawyers Guild believes that the decision in the instant case is regressive, and in sharp derogation of

the constitutional principles declared in the above cases. Within the several states it threatens, to the detriment of labor, a serious curtailment of the allowable area of economic conflict in labor controversies. In its wider implications it threatens a general abridgment of the allowable area of free speech.

The National Lawyers Guild is deeply concerned over the effect of the instant decision, if unchanged, upon the morale of the working men of this country who voluntarily refrain from exercising the very rights which are now subjected to arbitrary abridgment. This blow at their rights can neither be welcomed or supported. It cannot be expected to stimulate labor's contribution to our country's total effort to preserve its democracy from its external enemies.

Consent to the filing of this brief has been requested of the respective parties. The petitioner, Carpenters and Joiners Union of America, has given its consent. As yet no reply has been received from the respondents. In any event, because of the importance of the issues involved and the deep interest which the members of the National Lawyers Guild have in these issues, it is urged that the accompanying brief be considered by this Honorable Court.

NATIONAL LAWYERS GUILD
as *Amicus Curiae*

By its Committee On Labor Law
DAVID SCRIBNER
Secretary.

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 527.

CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL No. 213, *et al.*, Petitioners,

against

RITTER'S CAFE, *et al.*

BRIEF ON BEHALF OF THE NATIONAL LAWYERS GUILD AS *AMICUS CURIAE* ON APPLICATION FOR REHEARING.

The National Lawyers Guild had believed, and still does, that the *Thornhill, Carlson* and *Swing* cases witnessed a favorable climax to labor's long struggle to have its traditional methods of communication of matters of fact and opinion by means of the carrying of placards or picketing, declared to be within the protection of the Fourteenth Amendment and thus secure against abridgment by the states. Peaceful picketing, unaccompanied by falsehood or threat, had indeed advanced from a "sinister name to constitutional right." (See discussion under that title in *8 I. J. A. Bull. 113, May 1940.*)

The language of this court in these cases was unequivocal.

> "The carrying of signs and banners, no less than the raising of a flag, is a natural and appropriate

means of conveying information on matters of public concern." *Carlson* case, *supra*, at pages 112-113.

This language was in further amplification of the court's previous statement that the Fourteenth Amendment protected "every sort of publication which affords a vehicle of information and opinion". *Lovell* v. *Griffin*, 304 U. S. 444, 452. It was made clear, too, that the carrying of signs in the exercise of free speech was appropriate on the streets which, in recognition of previous holdings of this court, were described as "natural and proper places for the dissemination of information and opinion". It was further held that their use could not be prohibited on the plea that liberty of expression "may be exercised in some other place". *Lovell* v. *Griffin*, *supra*, *Schneider* v. *Irvington*, 308 U. S. 147, and *Hague* v. *CIO*, 307 U. S. 496.

The instant decision brushes aside these basic precepts and is in part predicated on the finding that the decision of the Texas court "leaves open to the disputants other traditional modes of communication."

The *Thornhill*, *Carlson* and *Swing* decisions do not permit the construction which the majority opinion has adopted in the instant case, which in effect limits picketing as an appropriate means of conveying information "on matters of public concern" to labor disputes alone, however broadly the term may be defined.

> "The freedom of speech and of the press guaranteed by the Constitution embraces *at least* the liberty to discuss publicly and truthfully *all* matters of public concern without previous restraint or fear of subsequent punishment." *Thornhill* case, *supra*, p. 101.

From the *Thornhill* and *Carlson* cases and the free speech and press cases which preceded them, it became abundantly clear that the Fourteenth Amendment pro-

tected newspapers, leaflets and placards, distributed or exhibited to persons at their homes or to the public on the streets, without regard to whether the information or matters of opinion which were being disseminated were in the "context" of a labor, political, religious or economic controversy.

Granted that the peaceful carrying of a truthful sign is a vehicle for the dissemination of matters of fact and opinion, there can be no limitation on the nature or type of *occasion* in connection with which speech is exercised in that form. While peaceful picketing or the carrying of placards is truly, as Justice Frankfurter described it, "the workingman's means of communication" *Milk Wagon Drivers, etc.* v. *Meadowmoor Dairies*, 312 U. S. 287, 293, there is no constitutional reason why it could not be indulged in by a priest protesting the showing of a motion picture believed obscene, by a consumer protesting the high cost of bread, by a citizen having some public grievance, or by the members of the petitioning unions in this case, whether or not their controversy with Ritter is defined as a labor dispute.

If the union can constitutionally state its message on the radio, in a newspaper advertisement, in a leaflet, or by mail, why may it not constitutionally use a placard for the same purpose, and carry that placard wherever citizens may lawfully be?

The cases prior to the present decision gave careful consideration to the effect on the right to picket, of the damage resulting to the person picketed. No excuse for state action abridging the constitutional right of the exercise of speech through picketing was found, as long as the picketing was peaceful and truthful. The damage, if any, was held to result from the competition of conflict-

ing ideas for "acceptance in the market place of public opinion".

The damage to Ritter in the instant case resulted only from the publication of the facts concerning the unions' controversy with him. Yet the Texas court (R. 40) relied on the damage to Ritter caused by the unions' peaceful picketing to establish a violation of the Texas anti-trust statutes. It found that the picketing was an attempt "to create restrictions in the free pursuit" by Ritter of his business, and that Ritter had suffered some economic loss. There was no finding that the public safety or welfare was in any way endangered by the controversy. However, the majority opinion of this court holds that the immunity given to Ritter by the Texas court from the exercise of speech by the unions, was a translation into law of the policy of the State of Texas "to promote the health, safety, morals and general welfare of its people". The majority opinion thus ignored the more precise principles of the *Thornhill* and other cases which prevent restrictions on free speech merely because of possible consequent damage to the person picketed, and which permit state regulation only to prevent "substantive evils" to the community in the face of "clear and present danger".

This court in the case of *Bakery & Pastry Drivers, etc. v. Wohl*, No. 901 (*10 LLR, 210*), decided the same day as the instant case applied the test to the state prohibition on picketing which it applied in the *Thornhill* case. As in the *Wohl* case here is "no substantive evil of such magnitude as to mark a limit to the right of free speech which the petitioners sought to exercise." As in the *Wohl* case, the record in this case "does not contain the slightest suggestion of embarrassment in the task of governance;" as in the *Wohl* case "there are no findings and no circumstances from which we can draw the inference that the

publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive." As in the *Wohl* case, "it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing."

The picketing of customers and of suppliers in the *Wohl* case was justified in part because of the "respondents' mobility and their insulation from the public as middlemen" which "made it practically impossible for petitioners to make known their legitimate grievances to the public." Plaster, the contractor in the present case, too, was a middleman. In carrying out his business he moves from job to job and he, too, is "insulated from the public" as far as a union appeal for support is concerned. Ritter, the owner of the land and building under construction, was not so insulated and was vulnerable to public feeling and action, particularly because of his restaurant business.

The majority opinion states that the dispute concerned merely "the labor conditions surrounding the construction of a building by a contractor", and that Plaster, the contractor, was the petitioner's "real adversary". This, we respectfully submit, does not give full value or weight to the facts as found by the Texas court. Ritter was a customer of Plaster. But more than that, he created the situation which gave rise to Plaster's hiring of non-union help for the construction of the Ritter building. The Texas court found (R. 27) "that the business agents of the defendant unions called upon plaintiff (Ritter) and asked that a provision be inserted in said contract requiring the contractor to use union labor on said job." It was Ritter's apparent refusal to insert such clause in his contract which created the dispute between him and the building unions. Thereafter (R. 27), when Plaster commenced operations under the contract, the dispute involved Plaster as well.

It was always in Ritter's power to correct this situation, albeit some additional expense might have been involved. He refused. He was and remained the "real adversary". The unions, in traditional fashion, sought to advise those members of the public who were likely to do business with Ritter, of the facts of their dispute with Ritter and incidentally with Plaster.

The majority opinion found that the restaurant business "has no *nexus* with the building dispute". While in the light of the constitutional principles the right to tell the truth peacefully cannot and should not be limited because of the nature of the relationship between the parties, or because of the absence thereof, there is sufficient in this case to establish that the unions had in fact a labor controversy with Ritter, and that the "*nexus*" between the restaurant business and the building operation was Ritter's sole ownership of both enterprises. The picketing was directed against Ritter in furtherance of a dispute with Ritter. It was conducted against Ritter at the place where it would be most effective.

If any real point of distinction can be found between the *Wohl* case and the instant case, it is that in the instant case the picketing which was suppressed was very effective and that in the *Wohl* case it was ineffective. The warning sounded by Justice Douglas in his concurring opinion in the *Wohl* case should be heeded. Testing the constitutionality of picketing from the standpoint of its effectiveness is indeed "a basic departure from *Thornhill* v. *Alabama* . . .".

That the majority opinion reflects such consideration is emphasized by the description of the picketing as an effort "to conscript neutrals". Justice Frankfurter in the *Swing* case, upholding the right of employes to communicate facts "deemed by them to be relevant to their interests", described the picketing in that case as an effort "to enlist

public opinion". The change in phraseology is significant, but in each case the union engaged in nothing but the peaceful carrying of placards which told the truth. Ritter was certainly no neutral. But public discussion, and the dissemination of information or the expression of opinion in public, is inevitably directed at "neutrals". The effort on both sides in an industrial dispute is to stimulate these neutrals into sympathetic support. The use of the word "conscript" is undoubtedly intended to indicate coercion, or at least some form of external compulsion. But there is no finding of fact by the Texas court which indicates any effort to coerce the public into abandoning its neutrality. The sole effort was to persuade the public to support the unions in their grievance against Ritter, not by conscription but rather by enlistment of its sympathy.

The many decisions referred to as embracing "probably the unanimous policy of the states" as forbidding "conscription of neutrals", or in other words, peaceful picketing, bear the further study and analysis of this Honorable Court. Most of them are no longer authority in the states in which they were rendered. Most of them were decided before the beneficent effects on labor's rights of the *Thornhill* and *Carlson* cases had permeated to the states. Most of them are supplanted by direct reversals or by subsequent decisions which have accepted and followed the mandates of the *Thornhill* and *Carlson* cases that truthful, peaceful picketing is a form of speech and as such beyond the reach of the restrictive power of state legislatures and courts. Such more recent cases include the following:

Kerns v. *Landgraf*, 128 N. J. Eq. 441;
Kingston Trap Rock v. *International*, 129 N. J. Eq. 570;

Heine's, Inc. v. *Truck Drivers, etc.*, 129 N. J. Eq. 308;

Feller v. *International Ladies' Garment Workers Union*, 129 N. J. Eq. 421;

Lora Lee v. *International Ladies' Garment Workers Union*, 129 N. J. Eq. 368;

Ellingson v. *Milk Drivers*, 377 Ill. 76;

International Association v. *Pauly Jail Building Co.*, 118 F. (2d) 615 (C. C. A. 8);

Alliance Auto Service v. *Cohen*, 341 Pa. 283;

Taxicab Drivers Local v. *Yellow Cab*, 123 F. (2d) 263 (C. C. A. 10);

People v. *Muller*, 286 N. Y. 281;

Fortenbury v. *Superior Court*, 16 Cal. (2d) 405;

American Federation of Labor v. *Bain; Congress of Industrial Organizations* v. *Bain*, 165 Or. 183;

People v. *Bashaw*, 295 Mich. 576;

McKay v. *Retail Automobile Salesmen's Local Union*, 16 Cal. (2d) 311; certiorari denied 313 U. S. 566;

Shafer v. *Registered Pharmacists Union*, 16 Cal. (2d) 379;

E. H. Renzel Co. v. *Warehousemen's Union*, 16 Cal. (2d) 369;

Lund v. *Auto Mechanics' Union*, 16 Cal. (2d) 379;

C. S. Smith Metropolitan Market Co. v. *Lyons*, 16 Cal. (2d) 389;

Denver Local Union No. 13, etc. v. *Perry Truck Lines*, 106 Colo. 25;

O'Neill v. *Building Service Employees*, 9 Wash. (2d) 507.

It is apparent that the decision in the instant case as it now stands is in sharp conflict with the previous decisions of this Honorable Court on the subject of peaceful picketing. These previous decisions have had a profound effect upon decisions in state courts. Many of these have opened wide to labor and labor's supporters the channels of free communication best adapted to labor's needs. Confidence in the courts and respect for the courts has consequently increased. On all sides, violence and threats of violence in labor controversies have been reduced. Yet, the process of recognizing the Fourteenth Amendment as a shield for labor's right to express itself peacefully and truthfully through picketing, has not been completed. Its completion has been suspended in large part by labor's voluntary abnegation of its rights in deference to the primary need of winning the war against the Axis powers. As a result there are few cases in the courts today involving picketing, and most of those, if not all (as does this one), antedate Pearl Harbor.

While labor is thus concentrating on the war effort, are its rights to peaceable action and persuasion to remain in jeopardy?

Is labor to be faced again with employer oppression, emboldened and strengthened by injunctions of a state court issued under the color of promoting "the health, safety, morals and general welfare of its people . . .", but which in actuality would only prevent labor from telling the public the truth through "the workingman's means of communication"—peaceful picketing?

The importance of the issues, the obvious conflict with prior decisions, the probable error in this court's appraisal of the facts below, and the sharp division in this court, all point to the urgent necessity for a reconsideration by this

Honorable Court of its decision. The motion for rehearing should be granted.

Respectfully submitted,

NATIONAL LAWYERS GUILD
as *Amicus Curiae*

By its Committee On Labor Law
DAVID SCRIBNER
Secretary.

P. 1, Black

SUPREME COURT OF THE UNITED STATES.

No: 527.—October Term, 1941.

Carpenters and Joiners Union of America, Local No. 213, et al., Petitioners,
vs.
Ritter's Cafe, et al.

On Writ of Certiorari to the Court of Civil Appeals for the First Supreme Judicial District of Texas.

[March 30, 1942.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The facts of this case are simple. Ritter, the respondent, made an agreement with a contractor named Plaster for the construction of a building at 2810 Broadway, Houston, Texas. The contract gave Plaster the right to make his own arrangements regarding the employment of labor in the construction of the building. He employed non-union carpenters and painters. The respondent was also the owner of Ritter's Cafe, a restaurant at 418 Broadway, a mile and a half away. So far as the record discloses, the new building was wholly unconnected with the business of Ritter's Cafe. All of the restaurant employees were members of the Hotel and Restaurant Employees International Alliance, Local 808. As to their restaurant work there was no controversy between Ritter and his employees or their union. Nor did the carpenters' and painters' unions, the petitioners here, have any quarrel with Ritter over his operation of the restaurant. No construction work of any kind was performed at the restaurant, and no carpenters or painters were employed there.

But because Plaster employed non-union labor, members of the carpenters' and painters' unions began to picket Ritter's Cafe immediately after the construction got under way. Walking back and forth in front of the restaurant, a picket carried a placard which read: "This Place is Unfair to Carpenters and Joiners Union of America, Local No. 213, and Painters Local No. 130, Affiliated with American Federation of Labor." Later on the wording was changed as follows: "The Owner of This Cafe Has Awarded a Contract to Erect a Building to W. A. Plaster Who is Unfair to the Carpenters Union 213 and Painter Union 130, Affiliated With

the American Federation of Labor." According to the undisputed finding of the Texas courts, which is controlling here, Ritter's Cafe was picketed "for the avowed purpose of forcing and compelling plaintiff [Ritter] to require the said contractor, Plaster, to use and employ only members of the defendant unions on the building under construction in the 2800 block on Broadway." Contemporaneous with this picketing, the restaurant workers' union, Local No. 808, called Ritter's employees out on strike and withdrew the union card from his establishment. Union truck drivers refused to cross the picket line to deliver food and other supplies to the restaurant. The effect of all this was "to prevent members of all trades-unions from patronizing plaintiff's cafe and to erect a barrier around plaintiff's cafe, across which no member of defendant unions or an affiliate will go." A curtailment of sixty per-cent of Ritter's business resulted.

Holding the petitioners' activities to constitute a violation of the state anti-trust law, Texas Penal Code, Art. 1632 *et seq.*, the Texas Court of Civil Appeals enjoined them from picketing Ritter's Cafe. The decree forbade neither picketing elsewhere (including the building under construction by Plaster) nor communication of the facts of the dispute by any means other than the picketing of Ritter's restaurant. 149 S. W. 2d 694. We brought the case here to consider the claim that the decree of the Court of Civil Appeals (the Supreme Court of Texas having refused a writ of error) infringed the freedom of speech guaranteed by the Due Process Clause of the Fourteenth Amendment. 314 U. S. —.

The economic contest between employer and employee has never concerned merely the immediate disputants. The clash of such conflicting interests inevitably implicates the well-being of the community. Society has therefore been compelled to throw its weight into the contest. The law has undertaken to balance the effort of the employer to carry on his business free from the interference of others against the effort of labor to further its economic self-interest. And every intervention of government in this struggle has in some respect abridged the freedom of action of one or the other or both.

The task of mediating between these competing interests has, until recently, been left largely to judicial lawmaking and not to legislation. "Courts were required, in the absence of legislation, to

determine what the public welfare demanded;—whether it would not be best subserved by leaving the contestants free to resort to any means not involving a breach of the peace or injury to tangible property; whether it was consistent with the public interest that the contestants should be permitted to invoke the aid of others not directly interested in the matter in controversy; and to what extent incidental injury to persons not parties to the controversy should be held justifiable." Mr. Justice Brandeis in *Truax* v. *Corrigan*, 257 U. S. 312, 363. The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. See Mr. Justice Holmes in *Aikens* v. *Wisconsin*, 195 U. S. 194, 205, and Mr. Justice Brandeis in *Truax* v. *Corrigan*, *supra*, at 372, *Dorchy* v. *Kansas*, 272 U. S. 306, 311, and *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 481. But the petitioners now claim that there is to be found in the Due Process Clause of the Fourteenth Amendment a constitutional command that peaceful picketing must be wholly immune from regulation by the community in order to protect the general interest, that the states must be powerless to confine the use of this industrial weapon within reasonable bounds.

The constitutional right to communicate peaceably to the public the facts of a legitimate dispute is not lost merely because a labor dispute is involved, *Thornhill* v. *Alabama*, 310 U. S. 88, or because the communication takes the form of picketing, even when the communication does not concern a dispute between an employer and those directly employed by him. *American Federation of Labor* v. *Swing*, 312 U. S. 321. But the circumstance that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the state to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of "liberty", the question always is whether the state has violated "the essential attributes of that liberty". Mr. Chief Justice Hughes in *Near* v. *Minnesota*, 283 U. S. 697, 708. While the right of free speech is

embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies "to promote the health, safety, morals and general welfare of its people. . . . The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise." *Ibid.*, at 707. "The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side." *Hudson Water Co.* v. *McCarter*, 209 U. S. 349, 355.

In the circumstances of the case before us Texas has declared that its general welfare would not be served if, in a controversy between a contractor and building workers' unions, the unions were permitted to bring to bear the full weight of familiar weapons of industrial combat against a restaurant business, which, as a business, has no nexus with the building dispute but which happens to be owned by a person who contracts with the builder. The precise question is, therefore, whether the Fourteenth Amendment prohibits Texas from drawing this line in confining the area of unrestricted industrial warfare.

Texas has undertaken to localize industrial conflict by prohibiting the exertion of concerted pressure directed at the business, wholly outside the economic context of the real dispute, of a person whose relation to the dispute arises from his business dealings with one of the disputants. The state has not attempted to outlaw whatever psychological pressure may be involved in the mere communication by an individual of the facts relating to his differences with another. Nor are we confronted here with a limitation upon speech in circumstances where there exists an "interdependence of economic interest of all engaged in the same industry", *American Federation of Labor* v. *Swing*, 312 U. S. 321, 326. Compare *Journeymen Tailors Union Local No. 195* v. *Miller's, Inc.*, 312 U. S. 658, and *Bakery & Pastry Drivers and Helpers Local No. 802* v. *Wohl*, decided this day. The line drawn by Texas in this case is not the line drawn by New York in the *Wohl* case. The dispute there related to the conditions under which bakery products were sold and delivered to retailers. The business of the retailers was therefore directly involved in the dispute. In picketing the retail establishments the union members would only be following the sub-

ject-matter of their dispute. Here we have a different situation. The dispute concerns the labor conditions surrounding the construction of a building by a contractor. Texas has deemed it desirable to insulate from the dispute an establishment which industrially has no connection with the dispute. Texas has not attempted to protect other business enterprises of the building contractor, Plaster, who is the petitioners' real adversary. We need not therefore consider problems that would arise if Texas had undertaken to draw such a line.

It is true that by peaceful picketing workingmen communicate their grievances. As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication. To deny to the states the power to draw this line is to write into the Constitution the notion that every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause would compel the states to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose.

In forbidding such conscription of neutrals in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states.[1] We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma. We must be mindful that "the rights of employers and employees to conduct their economic affairs and to compete with others for a share of the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance

[1] The authorities are collected in Teller, Labor Disputes and Collective Bargaining (1940), sec. 123; Hellerstein, Secondary Boycotts in Labor Disputes, 47 Yale L. J. 341; Frey, Cases on Labor Law (1941), pp. 239-73; cf. Galenson and Spector, The New York Labor-Injunction Statute and the Courts, 42 Col. L. Rev. 51, 68-71.

of the power of the State to set the limits of permissible contest open to industrial combatants." *Thornhill* v. *Alabama*, 310 U. S. 88, 103-04.

It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 527.—October Term, 1941.

Carpenters and Joiners Union of America, Local No. 213, et al., Petitioners,
vs.
Ritter's Cafe, et al.

On Writ of Certiorari to the Court of Civil Appeals for the First Supreme Judicial District of Texas.

[March 30, 1942.]

Mr. Justice Black, dissenting, with whom Mr. Justice Douglas and Mr. Justice Murphy concur.

The petitioners sought to convey to the public certain information. The injunction here sustained imposed two restraints on their doing so: (1) it enjoined them from picketing the respondent's cafe; (2) it enjoined them from carrying banners in front of the respondent's cafe, banners which contained inscriptions telling the public that the respondent had awarded a building contract to a man who was unfair to organized labor.

One member of the petitioner unions at a time peacefully walked in front of the respondent's cafe, carrying such a banner. It is not contended that the inscriptions were untruthful, nor that the language used was immoderate. There was no violence threatened or apprehended. Passers-by were not molested. It is clear from the opinion of the Texas Court of Civil Appeals that the injunction against picketing was granted, not because of any law directly aimed at picketing as such—Texas has no statute against picketing—nor to prevent violence, disorder, breach of the peace, or congestion of the streets. The immediate purpose of the injunction was to frustrate the union's objective of conveying information to that part of the public which came near the respondent's place of business, an objective which the court below decided was a violation of Texas antitrust laws. Conveying this truthful information in the manner chosen by the union was calculated to, and did, injure the respondent's business. His business was injured because many of those whom the information reached were sympathetic with the union side of the controversy and declined to patronize the respondent's cafe or have any other business transactions with him. Does injury of this kind to the respondent's business justify the Texas courts in thus restricting freedom of expression?

I am unable to agree that the controversy which prompted the unions to give publicity to the facts was no more than a private quarrel between the union and the non-union contractor. Whether members or non-members of the building trades unions are employed is known to depend to a large extent upon the attitude of building contractors. Their attitude can be greatly influenced by those with whom they do business. Disputes between one or two unions and one contractor over the merits and justice of union as opposed to non-union systems of employment are but a part of the nationwide controversy over the subject. I can see no reason why members of the public should be deprived of any opportunity to get information which might enable them to use their influence to tip the scales in favor of the side they think is right.

If there had been any doubt before, I should have thought that our decision in *Thornhill* v. *Alabama*, 310 U. S. 88, settled the question. There we said at pages 102-104: "In the circumstances of our times, the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. . . . Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the process of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. . . . It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. . . . But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests."

Whatever injury the respondent suffered here resulted from the peaceful and truthful statements made to the public that he had employed a non-union contractor to erect a building. This information, under the *Thornhill* case, the petitioners were privileged to impart and the public was entitled to receive. It is one thing for a state to regulate the use of its streets and highways so as

to keep them open and available for movement of people and property, *Schneider* v. *State*, 308 U. S. 147, 160; or to pass general regulations as to their use in the interest of public safety, peace, comfort, or convenience, *Cantwell* v. *Connecticut*, 310 U. S. 296, 306-307; or to protect its citizens from violence and breaches of the peace by those who are upon them, *Thornhill* v. *Alabama*, *supra*, 105. It is quite another thing, however to "abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature. . . ." *Schneider* v. *State*, *supra*, 160. The court below did not rest the restraints imposed on these petitioners upon the state's exercise of its permissible powers to regulate the use of its streets or the conduct of those rightfully upon them. Instead, it barred the petitioners from using the streets to convey information to the public because of the particular type of information they wished to convey. In so doing, it directly restricted the petitioners' rights to express themselves publicly concerning an issue which we recognized in the *Thornhill* case to be of public importance. It imposed the restriction for the reason that the public's response to such information would result in injury to a particular person's business, a reason which we said in the *Thornhill* case was insufficient to justify curtailment of free expression.

The injunction is defended, however, on the ground that the petitioners have been prohibited from passing information to the public at only some, but not at all places. It may be that the petitioners are left free to inform the public at other places or in other ways. Possibly they might, at greater expense, reach the public over the radio or through the newspapers, although if the theory of the court below be correct, it would seem that they could be enjoined from using these means of communication, too, to persuade people not to patronize the respondent's cafe. In any event, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *State*, *supra*, 163.

Accepting the Constitutional prohibition against any law "abridging the freedom of speech or of the press"—a prohibition made applicable to the states by the Fourteenth Amendment—"as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow", *Bridges* v. *California*, 314 U. S. —, I think the judgment should be reversed.

SUPREME COURT OF THE UNITED STATES.

No. 527.—October Term, 1941.

Carpenters and Joiners Union of America, Local No. 213, et al., Petitioners,
vs.
Ritter's Cafe, et al.

On Writ of Certiorari to the Court of Civil Appeals for the First Supreme Judicial District of Texas.

[March 30, 1942.]

Mr. Justice Reed, dissenting.

The Texas court enjoined petitioners, a labor union of carpenters and joiners, another union of painters, and all of their members from picketing the restaurant of the respondent, E. R. Ritter, plaintiff below, doing business under the trade name of Ritter's Cafe at 418 Broadway, in Houston, "and from carrying banners peacefully and in any other manner upon the sidewalks in front" of the restaurant. There had been no violence. Only two pickets, one from each union, walked back and forth, carrying placards which before the injunction issued were modified to read, "The Owner of This Cafe Has Awarded a Contract to Erect a Building to W. A. Plaster Who is Unfair to the Carpenters Union 213 and Painter Union 130, Affiliated with the American Federation of Labor."

Plaster, a building contractor, was putting up a structure for respondent, Ritter, in the 2800 block of Broadway, under a contract which did not require Plaster to employ union labor. The record does not show whether or not this new building is to be used in the restaurant business. He was employing non-union workers. The restaurant, however, was unionized, its employees being members of Hotel and Restaurant Employees' Local 808. They quit on the day the picketing began, union drivers refused to deliver supplies, and the business slumped sixty per cent. The court found petitioners' conduct an invasion of respondents' right to conduct a legitimate business and an attempt to interfere illegally with a contract with third parties.

The injunction was issued by the Texas court because such invasion or attempt at invasion of the rights of a business man was held "to create restrictions in the free pursuit" of business contrary to the Texas anti-trust laws. Tex. Rev. Civ. Stat. (Vernon, 1936) Arts 7426, 7428; Tex. Penal Code (Vernon, 1936) Arts. 1632, 1634, 1635. 149 S. W. 2d 694. The petitioners' challenge to the validity of the injunction is based on the constitutional right of free speech guaranteed them by the Fourteenth Amendment to the Constitution of the United States. *Schneider* v. *State*, 308 U. S. 147, 160.

This challenge involves two particularly delicate relationships. These are that between the federal and state governments and that between a state and labor unions within its borders. So far as the injunction depends upon the action of the Texas court in construing its anti-trust statutes to forbid such interference with the restaurant business, the order is unassailable here. But if such an interpretation denies to Texans claimed rights guaranteed to them by the federal Constitution, the state authority must accommodate its orders to preserve that right. Cf. *International Harvester Co.* v. *Kentucky*, 234 U. S. 216; *Lindsey* v. *Washington*, 301 U. S. 397, 400; *Minnesota* v. *Probate Court*, 309 U. S. 270, 273.

Recent cases in this Court have sought to make more definite the extent and limitations of the rights of free speech in labor disputes. For some time there has been general acceptance of the fundamental right to publicize "the facts of a labor dispute in a peaceful way through appropriate means." One of the recognized means is by orderly picketing with banners or placards. *Thornhill* v. *Alabama*, 310 U. S. 88, 104. In *Carlson* v. *California*, 310 U. S. 106, 113, we said: "For the reasons set forth in our opinion in *Thornhill* v. *Alabama, supra*, publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgment by a State." The desire of both sides in labor controversies to gain advantages for themselves and limit similar opportunities for their opponents has led each to seek to expand or contract the constitutionally protected area for picketing operations as suits their respective purposes. Recognition of the basic right to picket made the location of lines beyond which picketing could

not be employed an important objective of those who suffer from its use.

In the *Carlson* and *Thornhill* cases legislation forbidding picketing for the purpose of interfering with the business of another was invalidated because it was an unconstitutional prohibition of the worker's right to publicize his situation. It was not thought of sufficient importance in either case to mention in the opinion whether the picket was an interested disputant with those picketed or an utter stranger to the controversy and the indusfry. In those carefully phrased decisions the possibility of state control of socially menacing evils, flowing from industrial disputes, was recognized, but those general evils were not of the kind which were considered to warrant interference with free speech by peaceful picketing.[1] We said:

"It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants. See Mr. Justice Brandeis in 254 U. S. at 488. It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society."[2]

An instance of state control over peaceful picketing soon appeared. In *Drivers Union* v. *Meadowmoor Co.*, 312 U. S. 287, this Court, though not without dissent, upheld Illinois' ruling that where "acts of picketing in themselves peaceful" are enmeshed in violence, immediate future peaceful picketing may be enjoined. This decision compelled a less extreme result in *Hotel & Restaurant Employee's Int'l Alliance* v. *Wisconsin Employment Relations Board*, No. 124 this Term, decided March 2, 1942. In the latter case, the order approved "forbids only violence" and "permits peaceful picketing." Nothing more than the validity of prohibitions against violence was decided as to the constitutionality of the Wisconsin Employment Peace Act.

[1] Evidently the conception was that of "imminent and aggravated damage," A. F. of L. v. Swing, 312 U. S. 321, 325.

[2] 310 U. S. 88, 103-104.

On the same day that *Meadowmoor* was handed down, *A. F. of L.* v. *Swing*, 312 U. S. 321, was decided. In *Swing's* case a union of beauty shop workers picketed a beauty parlor. They were not and had not been employees of the establishment. We stated the issue thus:

"More thorough study of the record and full argument have reduced the issue to this: is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?"[3] There was nothing in the opinion to intimate that the answer would have varied, if the union had been a local of the teamsters or painters. The injunction granted by Illinois was set aside with these words:

"Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in *Thornhill's* case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478."[4]

Today this Court decides *Bakery & Pastry Drivers & Helpers Local 802* v. *Wohl*, No. 901 of the October Term 1940. In this case

[3] 312 U. S. 321, 323.

[4] 312 U. S. 321, 325-326.

the union picketed manufacturing bakers who sold to and threatened to picket grocers and retail bakers who bought from peddlers. The peddlers purchased bakery goods and sold them to the trade. The labor controversy was the effort of the unions to compel the peddlers to hire a union driver one day a week. The state forbade the picketing of the manufacturers and of the retailers, regardless of whether the picketing placards were directed at the product or the general business of the retailers.[5] Although there is no possible labor relation between the peddlers and their customers or between the grocers and retail bakers and the union, we decline to permit New York to take steps to protect the places of business of those who dealt with the peddlers against picketing. It seems obvious that the selling of baked products, distributed by the peddlers is a minor part of the grocery business. Recent cases illustrate the present tendency of state courts to permit workers outside the industry picketed to publicize their labor disputes with others.[6] To permit the *Wohl* injunction, without evidence of special embarrassment to peace and order would, we hold, go beyond permissible limitations on free speech.

We are of the view that the right of free speech upheld in the decisions requires Texas to permit the publicizing of the dissatisfaction over Mr. Ritter's contract for his new building. Until today orderly, regulated, picketing has been within the protection of the Fourteenth Amendment. Such picketing was obviously disadvantageous to the business affected. In balancing social advantages it has been felt that the preservation of free speech in labor disputes was more important than the freedom of enterprise from the burdens of the picket line. It was a limitation on state power to deal as it pleased with labor disputes; a limitation con-

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[5] "It is hereby ordered, . . . that the defendants, . . . are perpetually restrained and enjoined:

(a) From picketing the places of business of manufacturing bakers who sell to the plaintiffs . . . because of the fact that said manufacturing bakers sell to these plaintiffs; and

(b) From picketing the places of business of customers of these plaintiffs because such customers purchase baked products from these plaintiffs; . . . ."

[6] People v. Harris, 104 Colo. 386, 91 P. 2d 989 (May, 1939); Byck Bros. & Co. v. Martin, 4 C. C. H. Labor Cases ¶ 60,430 (Ky. Cir. Ct., March, 1941); Ellingsen v. Milk Wagon Drivers' Union, 377 Ill. 76, 35 N. E. 2d 349 (June, 1941); People v. Muller, 286 N. Y. 281, 36 N. E. 2d 206 (July, 1941); Maywood Farms Co. v. Milk Wagon Drivers' Union, 313 Ill. App. 24, 38 N. E. 2d 972 (January, 1942); Mason & Dixon Lines v. Odom, 5 C. C. H. Labor Cases ¶ 60,942 (Ga., February, 1942).

sented to by the state when it became a part of the nation and one of precisely the same quality as those enforced in *Carlson, Thornhill* and *Swing.*

We are not here forced, as the Court assumes, to support a constitutional interpretation that peaceful picketing "must be wholly immune from regulation by the community in order to protect the general interest." We do not doubt the right of the state to impose not only some but many restrictions upon peaceful picketing. Reasonable numbers, quietness, truthful placards, open ingress and egress, suitable hours or other proper limitations, not destructive of the right to tell of labor difficulties, may be required. The Court limits its holding to the peculiar circumstances of this case. All decisions necessarily are so limited but from the decisions rules are drawn. By this decision a state rule is upheld which forbids peaceful picketing of businesses by strangers to the business and the industry of which it is a part. The legal kernel of the Court's present decision is that the "sphere" of free speech is confined to the "area of the industry within which a labor dispute arises." This rule is applied, in this case, even though the picketers are publicizing a labor dispute arising from a contract to which the sole owner of the business picketed is a party. Even if the construction contract covered an attached addition to the restaurant, the Court's opinion would not permit picketing directed against the restaurant. To construe this Texas decision as within state powers and the *Wohl* decision as outside their boundaries, plainly discloses the inadequacy of the test presumably employed, that is, the supposed lack of economic "interdependence" between the picketers and the picketed.

The philosophy behind the conclusion of the Court in this case gives to a state the right to bar from picket lines workers who are not a part of the industry picketed. We are not told whether the test of eligibility to picket is to be applied by crafts or enterprises or how we are to determine economic interdependence or the boundaries of particular industries. Such differentiations are yet to be considered. The decision withdraws federal constitutional protection from the freedom of workers outside an industry to state their side of a labor controversy by picketing. So long as civil government is able to function normally for the protection of its citizens, such a limitation upon free speech is unwarranted.